IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11188 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

ANIL ALIAS HUKAM RAMESH CHAUHAN

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 11188 of 2003

MS KRISHNA U MISHRA for Petitioner No. 1

MR AMRISH K PANDYA for Petitioner No. 1

MS MITA PANCHAL Ld. AGP for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE J.R.VORA

Date of decision: 17/09/2003

ORAL JUDGEMENT

By way of this special civil application, the petitioner has challenged the order of detention passed

against him by the Police Commissioner, Surat City on 4.2.2003 under the exercise of powers under sec. 3(1) of the Gujarat Prevention of Anti Social Activities Act, 1985 (hereinafter referred to as "the PASA Act" for short).

The grounds of detention served upon the petitioner and placed on record reveal that the detaining authority mainly relied upon two facts for reaching to the subjective satisfaction. Firstly, registration of offences against the petitioner in all three under sec. 323, 324, 504, 506(2) and 354 of IPC and in-camera statements of two witnesses as recorded by the proposing authority on 20.1.2003 and verified by the detaining authority on 1.2.2003. The witness revealed the incidents occurred on 5.1.2002 and 9.1.2003 wherein the witnesses have stated that the petitioner picked up the quarrel with the witnesses and demanded amount. On refusal, witnesses were beaten and public order was disturbed in the locality. The impugned order came to be passed from these facts.

Ld. advocate Mr. Pandya for Ms.. Mishra for the petitioner and Ld. AGP Mr. Chauhan were heard at length.

Out of various contentions raised on behalf of the petitioner and controverted by ld. AGP, it appears that this petition can be disposed of on the ground that whether the subjective satisfaction of the detaining authority is vitiated by non-application of mind. It is an admitted fact as revealed from the grounds that in the offence registered against the petitioner on 11.1.2003 the petitioner was in judicial custody when the order of detention came to be served. In this respect, the detaining authority concluded that in this offence the petitioner was likely to be released on bail at any time and was likely to continue his illegal activity. The facts of the case are covered by a decision of the Apex Court in the matter of Amtrilal & Ors., vs. Union Government, through Secretary, Ministry of Finance & Ors., as reported in AIR 2000 SC 3675. The order of detention is required to be quashed on this ground alone.

In the result, this special civil application is allowed. The order impugned in this special civil application passed on 4.2.2003 by the Police Commissioner, Surat City, under the PASA Act against the petitioner is quashed and set aside. The petitioner is directed to be set at liberty forthwith, if he is not

required to be detained in jail for any other purpose.
Rule made absolute with no order as to costs.

(J.R. VORA, J.)
mandora/